



Comptroller General
of the United States

Washington, D.C. 20548

Ruppert

Decision

Matter of: United Satellite Systems

File: B-237517

Date: February 22, 1990

Doug Dehnert, for the protester.
Fred Poteet, for the interested party, Satellite Systems Corporation.
James W. Durham, Office of Contracts, United States Information Agency, for the agency.
George Ruppert, Esq., David Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where brand name or equal solicitation required descriptive material for equal offers in order to establish technical equivalence to brand name item, agency properly determined that protester's blanket statement that proposed equal product is equivalent to the brand name was not sufficient to demonstrate equivalence, and thus properly rejected the proposal notwithstanding its lower price.

DECISION

United Satellite Systems protests the award of a contract to Satellite Systems Corporation, under United States Information Agency (USIA) request for proposals (RFP) No. 1A2401-S9243617(CS), for brand name or equal television receive only (TVRO) satellite earth stations. United Satellite challenges the agency's determination that its proposal offering equal components was technically unacceptable, and argues that it was entitled to award based on its low price.

We deny the protest.

The solicitation requested proposals to supply up to 16 TVRO satellite earth stations, to be installed under a separate contract at diplomatic missions in Africa, for the reception of television programs originating in government studios in Washington, D.C. and transmitted via orbiting satellite. The solicitation provided that price would be given "higher"

047846/ 140712

weight than the technical factor in the evaluation of proposals; the agency's undisclosed evaluation plan assigned price a weight of 55 points and the technical factor a weight of 45 points. The RFP listed the technical evaluation criteria, in ascending order of importance, as follows: (1) offeror's successful performance of comparable projects (with an undisclosed weight of 4.5 points); (2) experience in supervising TVRO installation (4.5 points); (3) organization qualifications and background (9 points); and (4) engineering analysis and understanding of the required effort (27 points). The RFP provided that descriptive literature was to be submitted for offers of other than the brand name items and would be evaluated to determine whether the products offered met the listed salient characteristics of the brand name equipment. The RFP advised that the government reserved the right to award to other than the low offeror based on the evaluation of factors other than cost.

Seven proposals were received. Four firms, including United Satellite, were determined to be in the competitive range and were requested to submit best and final offers (BAFOs). The requests for BAFOs set forth the areas of the proposals which were deficient or required clarification.

Based upon the three BAFOs received, the agency determined that Satellite Systems had submitted the proposal most advantageous to the government. Although Satellite Systems' price (\$383,175) was 21 percent higher than United Satellite's (\$315,940), Satellite Systems received the maximum technical score (45 points), while United Satellite received the lowest technical score (18 points). With respect to United Satellite, the agency found that its response to the solicitation requirements was "technically unacceptable" in several aspects. Specifically, the agency determined that United Satellite had not specified or adequately documented that the overall system offered the required efficiency and other operating characteristics specified in the solicitation, and that it also had failed to establish the equivalence of several of its proposed "equal" components. As a result of the significant disparity in technical scores, Satellite Systems received a higher overall score (90.10 points) than United Satellite's (73 points). Upon learning of the ensuing award to Satellite Systems, United Satellite filed this protest with our Office.

The protester first questions several aspects of the solicitation; it contends that the period--32 days after issuance of the RFP--allowed for questions and submission of proposals was insufficient, that several of the brand name items were unavailable in the required quantity, that some

specified salient characteristics did not accurately describe the brand name items or were otherwise unreasonable, and that the solicitation requirement for an overall technical analysis of the operating characteristics of the proposed system was unnecessary where the solicitation also called for brand name or equal proposals. In addition, United Satellite contends that the primary consideration for the award of this contract should have been price; it argues that it submitted the low, technically acceptable proposal, and therefore was entitled to award. Finally, United Satellite appears to argue that the agency failed to advise the firm of the specific uncertainties in its technical proposal.

We find no basis to question the award to Satellite Systems.

As an initial matter, United Satellite's objections to the terms of the solicitation are untimely. Although United Satellite questioned the availability of certain brand name items prior to the closing date for receipt of proposals, it did not then protest when the agency, in responding to offerors' questions by means of an amendment to the solicitation, reiterated the solicitation requirements. Nor did it then protest the other alleged deficiencies in the solicitation. Our Bid Protest Regulations require that protests based upon alleged deficiencies in a solicitation be filed not later than the closing date for receipt of initial proposals or, where the alleged improprieties arise after the initial closing date, by the next closing date. 4 C.F.R. § 21.2(a)(1) (1989). Because United Satellite did not protest until after award, this portion of its protest will not be considered.

Further, we find nothing objectionable in the agency's discussions with United Satellite. The record indicates that in the request for BAFOs the agency informed United Satellite of the areas in which its proposal was deficient or required clarification. See Greco Sys., B-237424, Feb. 15, 1990, 90-1 CPD ¶ ____. Although United Satellite supplied additional material in its BAFO concerning its proposed equal components, as discussed below, the agency found that this material did not clearly demonstrate the technical equivalence of United Satellite's equipment to the brand name equipment.

Our review indicates that for several of the salient characteristics, United Satellite's BAFO amounted to little more than a blanket statement that its equipment is "equivalent" or offered superior performance to the brand name equipment. For example, the protester proposed to offer either its own model satellite receiver, described as

"equivalent" or the current model of the brand name receiver. United Satellite advised, however, that the brand name receiver could only be furnished for delivery 6-1/2 months after receipt of order, rather than the required 45 days, and with no guarantee that this model would be available in the option year of the contract. The agency properly found this proposed deviation from the delivery schedule unacceptable. With respect to its own model receiver, the protester did not indicate that it could be configured for J-17 audio de-emphasis characteristics, which the agency required and the solicitation specified.

It is well-established that blanket statements of compliance or of the offeror's belief that its product is functionally equivalent to the brand name product are not enough to demonstrate equivalence; rather, an offeror must affirmatively establish compliance with the salient characteristics. See BRS & Assocs., Inc., B-236883, Dec. 11, 1989, 89-2 CPD ¶ 539. United Satellite failed to do so here. Moreover, in other areas, United Satellite's BAFO actually demonstrated a lack of equivalence. For example, the model stereo processor offered by United Satellite only provides a 5.0 to 8.0 megahertz tuning range, not the 5.0 to 8.5 megahertz range specified in the salient characteristics.

Based upon our review of the record, therefore, we find no reason to question the evaluation. While United Satellite submitted the lowest-priced proposal, it is well-settled that in a negotiated procurement the government is not required to make award to the firm offering the lowest price unless the RFP specifies that price will be determinative factor. See Frequency Eng'g Laboratories Corp., B-225606, Apr. 9, 1987, 87-1 CPD ¶ 392. In the absence of such an express provision, the procuring agency retains the discretion to select a higher-priced, more highly-rated proposal if doing so is in the government's best interest and is consistent with the solicitation's stated evaluation and source selection scheme. Id. Here, the RFP made no representation that price alone would be the basis for award; instead, it merely advised that the price proposal would be given higher weight than the technical proposal, and specifically stated that the government reserved the right to make award to other than the lowest-priced offeror based on consideration of the other evaluation factors set forth in the RFP. In view of the protester's failure to establish the equality of its proposed equal equipment, we have no basis to question the agency's determination that

Satellite Systems' highly-rated proposal offered the best overall value to the government. Systems & Processes Eng'g Corp., B-234142, May 10, 1989, 89-1 CPD ¶ 441.

The protest is denied.

Ronald Berger
for James F. Hinchman
General Counsel